IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.517 OF 2002
IN
CHAMBER SUMMONS NO.1096 OF 2001
IN
SUIT NO.2632 OF 1992

1. Shri Suresh M. Jain
of Mumbai, Indian Inhabitant,
residing at Flat No.301,
Rajendra Kunj, Wing 'A', 31,
Dr.D.B.Marg, Mumbai Central,
Mumbai-400 008.

2. Shri Rajesh J. Bafna,
of Mumbai, Indian Inhabitant,
residing at Flat No.301,
Rajendra Kunj, Wing 'A', 31,
Dr.D.B.Marg, Mumbai Central,
Mumbai-400 008.

Appellants
(original Applicants)

vs.

1. Daruwala Wadi C.H.S. Ltd.,
a Society registered under the
provisions of Maharashtra Co-
operative Societies Act, 1960
and having its office at 31,
Dr.Bhadkamkar Marg,
Mumbai 400 007.

2. Shri Pukhraj Chunilalji Bafna,
of Mumbai, Indian Inhabitant,
carrying on business under the
name and style of M/s.Paras
Enterprises having its office
at 304, Veena Chamber, 21,
Dalal Street, Fort, Mumbai-400 028.

3. M/s.Shree Amit Builders, a
partnership firm, registered
under the Indian Partnership Act,
1932 and having its office at
Hamam Street, 2nd floor, Fort,
Mumbai 400 023.

4. M/s.Honesty Builders Pvt.Ltd.,
a company incorporated under the
Companies Act, 1956 and having
its registered address at C-503,

Kaushtubh Nagar, Ramchandra Lane,
Ext. Malad (West), Mumbai 400 064
and office at Flat No.1, Ground
Floor, New Building, Plot C.S.
No.1/248, of Tardeo Division, 31,
Dr. Bhadkamkar Marg, Mumbai-8.

Respondents
(Respondent No.1 is original plaintiff & respondent nos. 2 to 4 are original defendant nos. 1 to 3.).

Mr.S.P.Gore i/b.M/s.Legal Juris for the appellants.

Mr.B.D.Joshi with Ms.Bharati Mahant i/b.M/s.Divya Shah & Associates for the respondents.

ALONG WITH
APPEAL NO.969 OF 2002
IN
CHAMBER SUMMONS NO.670 OF 2001
IN
SUIT NO.2632 OF 1992

1. Smt.Anjana Dinesh Mehta
2. Shri Ghewarchand S. Mehta both
of Mumbai, Indian Inhabitant,
residing at Flat No.501 & 502,
Rajendra Kunj, Wing 'A', 31,
Dr.D.B.Marg, Mumbai Central,
Mumbai-400 008.

Appellants
(original Applicants)

vs.

1. Daruwala Wadi C.H.S. Ltd.,
a Society registered under the
provisions of Maharashtra Co-
operative Societies Act, 1960
and having its office at 31,
Dr.Bhadkamkar Marg,
Mumbai 400 007.

2. Shri Pukhraj Chunilalji Bafna,
of Bombay, Indian Inhabitant, previously
carrying on business under the
name and style of M/s.Paras
Enterprises having its office
at 304, Veena Chamber, 21,
Dalal Street, Fort, Mumbai-400 001.

3. M/s.Shree Amit Builders, a

partnership firm, duly registered
under the Indian Partnership Act,
1932 and having its office at
Hamam Street, 2nd floor, Fort,
Mumbai 400 001.

4. M/s.Honesty Builders Pvt.Ltd.,
a company incorporated under the
Companies Act, 1956 and having
its registered address at C-503,
Kasturba Nagar, Ramchandra Lane,
Ext. Malad (West), Mumbai 400 054
and office at Flat No.1, Ground
Floor, New Bldg, Plot bearing C.S.
No.1/248, of Tardeo Division, 31,
Dr. Bhadkamkar Marg, Mumbai. Respondents
(original plaintiff &
defendants 1 to 3.).

Mr.Amit Sheth for the appellants.

Mr.B.D.Joshi with Ms.Bharati Mahant i/b.M/s.Divya Shah &
Associates for the respondents.

ALONG WITH
APPEAL NO.970 OF 2002
IN
CHAMBER SUMMONS NO.671 OF 2001
IN
SUIT NO.2632 OF 1992

1. Smt.Pavan R.Doshi
2. Smt.Manju M.Mehta both
of Mumbai, Indian Inhabitant,
residing at Flat No.503 & 504,
Rajendra Kunj, Wing 'A', 31,
Dr.D.B.Marg, Mumbai Central,
Mumbai-400 008. Appellants
(original Applicants)

vs.

1. Daruwala Wadi C.H.S. Ltd.,
a Society registered under the
provisions of Maharashtra Co-
operative Societies Act, 1960
and having its office at 31,
Dr.Bhadkamkar Marg,
Mumbai 400 007.

2. Shri Pukhraj Chunilalji Bafna,

of Bombay, Indian Inhabitant, previously carrying on business under the name and style of M/s.Paras Enterprises having its office at 304, Veena Chamber, 21, Dalal Street, Fort, Mumbai-400 001.

3. M/s.Shree Amit Builders, a partnership firm, duly registered under the Indian Partnership Act, 1932 and having its office at Hamam Street, 2nd floor, Fort, Mumbai 400 001.

4. M/s.Honesty Builders Pvt.Ltd., a company incorporated under the Companies Act, 1956 and having its registered address at C-503, Kasturba Nagar, Ramchandra Lane, Ext. Malad (West), Mumbai 400 054 and office at Flat No.1, Ground Floor, New Bldg, Plot bearing C.S. No.1/248, of Tardeo Division, 31, Dr. Bhadkamkar Marg, Mumbai.

Respondents
(original plaintiff & defendants 1 to 3.).

Mr.Amit Sheth for the appellants.

Mr.B.D.Joshi with Ms.Bharati Mahant i/b.M/s.Divya Shah & Associates for the respondents.

ALONG WITH
APPEAL NO.971 OF 2002
IN
CHAMBER SUMMONS NO.672 OF 2001
IN
SUIT NO.2632 OF 1992

1. Shri Dinesh M. Bafna, of Mumbai, Indian Inhabitant, residing at Flat No.304, Rajendra Kunj, Wing ‘A’, 31, Dr.D.B.Marg, Mumbai Central, Mumbai-400 008.

Appellants
(original Applicants)

vs.

1. Daruwala Wadi C.H.S. Ltd., a Society registered under the provisions of Maharashtra Co-operative Societies Act, 1960

and having its office at 31,
Dr.Bhadkamkar Marg,
Mumbai 400 007.

2. Shri Pukhraj Chunilalji Bafna,
of Bombay, Indian Inhabitant, previously
carrying on business under the
name and style of M/s.Paras
Enterprises having its office
at 304, Veena Chamber, 21,
Dalal Street, Fort, Mumbai-400 001.

3. M/s.Shree Amit Builders, a
partnership firm, duly registered
under the Indian Partnership Act,
1932 and having its office at
Hamam Street, 2nd floor, Fort,
Mumbai 400 001.

4. M/s.Honesty Builders Pvt.Ltd.,
a company incorporated under the
Companies Act, 1956 and having
its registered address at C-503,
Kasturba Nagar, Ramchandra Lane,
Ext. Malad (West), Mumbai 400 054
and office at Flat No.1, Ground
Floor, New Bldg, Plot bearing C.S.
No.1/248, of Tardeo Division, 31,
Dr. Bhadkamkar Marg, Mumbai.

Respondents
(original plaintiff &
defendants 1 to 3.).

Mr.Amit Sheth for the appellants.

Mr.B.D.Joshi with Ms.Bharati Mahant i/b.M/s.Divya Shah &
Associates for the respondents.

ALONG WITH
APPEAL NO.972 OF 2002
IN
CHAMBER SUMMONS NO.673 OF 2001
IN
SUIT NO.2632 OF 1992

1. Smt.Shantidevi S. Jain
2. Shri Shobha Jain both
of Mumbai, Indian Inhabitant,
residing at Flat No.401 & 402,
Rajendra Kunj, Wing ‘A’, 31,
Dr.D.B.Marg, Mumbai Central,
Mumbai-400 008.

Appellants
(original Applicants)

vs.

1. Daruwala Wadi C.H.S. Ltd.,
   a Society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 and having its office at 31, Dr.Bhadkamkar Marg, Mumbai 400 007.

2. Shri Pukhraj Chunilalji Bafna,
   of Bombay, Indian Inhabitant, previously carrying on business under the name and style of M/s.Paras Enterprises having its office at 304, Veena Chamber, 21, Dalal Street, Fort, Mumbai-400 001.

3. M/s.Shree Amit Builders, a
   partnership firm, duly registered under the Indian Partnership Act, 1932 and having its office at Hamam Street, 2nd floor, Fort, Mumbai 400 001.

4. M/s.Honesty Builders Pvt.Ltd.,
   a company incorporated under the Companies Act, 1956 and having its registered address at C-503, Kasturba Nagar, Ramchandra Lane, Ext. Malad (West), Mumbai 400 054 and office at Flat No.1, Ground Floor, New Bldg, Plot bearing C.S. No.1/248, of Tardeo Division, 31, Dr. Bhadkamkar Marg, Mumbai.

Respondents
(original plaintiff & defendants 1 to 3.).

Mr.Amit Sheth for the appellants.

Mr.B.D.Joshi with Ms.Bharati Mahant i/b.M/s.Divya Shah & Associates for the respondents.

ALONG WITH
APPEAL NO.973 OF 2002
IN
CHAMBER SUMMONS NO.674 OF 2001
IN
SUIT NO.2632 OF 1992

1. Smt.Geeta N. Jain
2. Shri Narendra S. Jain both

of Mumbai, Indian Inhabitant,
residing at Flat No.403 & 404,
Rajendra Kunj, Wing 'A', 31,
Dr.D.B.Marg, Mumbai Central,
Mumbai-400 008. Appellants
(original Applicants)

vs.

1. Daruwala Wadi C.H.S. Ltd.,
a Society registered under the
provisions of Maharashtra Co-
operative Societies Act, 1960
and having its office at 31,
Dr.Bhadkamkar Marg,
Mumbai 400 007.

2. Shri Pukhraj Chunilalji Bafna,
of Bombay, Indian Inhabitant, previously
carrying on business under the firm
name and style of M/s.Paras
Enterprises having its office
at 304, Veena Chamber, 21,
Dalal Street, Fort, Mumbai-400 001.

3. M/s.Shree Amit Builders, a
partnership firm, duly registered
under the Indian Partnership Act,
1932 and having its office at
Hamam Street, 2nd floor, Fort,
Mumbai 400 001.

4. M/s.Honesty Builders Pvt.Ltd.,
a company incorporated under the
Companies Act, 1956 and having
its registered address at C-503,
Kasturba Nagar, Ramchandra Lane,
Ext. Malad (West), Mumbai 400 054
and office at Flat No.1, Ground
Floor, New Bldg, Plot bearing C.S.
No.1/248, of Tardeo Division, 31,
Dr. Bhadkamkar Marg, Mumbai. Respondents
(original plaintiff &
defendants 1 to 3.).

Mr.Amit Sheth for the appellants.

Mr.B.D.Joshi with Ms.Bharati Mahant i/b.M/s.Divya Shah &
Associates for the respondents.

ALONG WITH
APPEAL NO.974 OF 2002
IN
CHAMBER SUMMONS NO.675 OF 2001

IN
SUIT NO.2632 OF 1992

1. Shri Ashok V. Bohra
2. Smt.Mohini P. Bohra both
of Mumbai, Indian Inhabitant,
residing at Flat No.703 & 704,
Rajendra Kunj, Wing 'A', 31,
Dr.D.B.Marg, Mumbai Central,
Mumbai-400 008.

Appellants
(original Applicants)

vs.

1. Daruwala Wadi C.H.S. Ltd.,
a Society registered under the
provisions of Maharashtra Co-
operative Societies Act, 1960
and having its office at 31,
Dr.Bhadkamkar Marg,
Mumbai 400 007.

2. Shri Pukhraj Chunilalji Bafna,
of Bombay, Indian Inhabitant, previously
carrying on business under the firm
name and style of M/s.Paras
Enterprises having its office
at 304, Veena Chamber, 21,
Dalal Street, Fort, Mumbai-400 001.

3. M/s.Shree Amit Builders, a
partnership firm, duly registered
under the Indian Partnership Act,
1932 and having its office at
Hamam Street, 2nd floor, Fort,
Mumbai 400 001.

4. M/s.Honesty Builders Pvt.Ltd.,
a company incorporated under the
Companies Act, 1956 and having
its registered address at C-503,
Kasturba Nagar, Ramchandra Lane,
Ext. Malad (West), Mumbai 400 054
and office at Flat No.1, Ground
Floor, New Bldg, Plot bearing C.S.
No.1/248, of Tardeo Division, 31,
Dr. Bhadkamkar Marg, Mumbai.

Respondents
(original plaintiff &
defendants 1 to 3.).

Mr.Mr.K.R.Bulchandani with Amit Sheth for the appellants.

Mr.B.D.Joshi with Ms.Bharati Mahant i/b.M/s.Divya Shah & Associates for the respondents.

ALONG WITH
APPEAL NO.975 OF 2002
IN
CHAMBER SUMMONS NO.676 OF 2001
IN
SUIT NO.2632 OF 1992

1. Smt.Madhu D. Jain
2. Smt. Dinesh T. Jain both
of Mumbai, Indian Inhabitant,
residing at Flat No.603 & 604,
Rajendra Kunj, Wing 'A', 31,
Dr.D.B.Marg, Mumbai Central,
Mumbai-400 008. Appellants
(original Applicants)

vs.

1. Daruwala Wadi C.H.S. Ltd.,
a Society registered under the
provisions of Maharashtra Co-
operative Societies Act, 1960
and having its office at 31,
Dr.Bhadkamkar Marg,
Mumbai 400 007.

2. Shri Pukhraj Chunilalji Bafna,
of Bombay, Indian Inhabitant, previously
carrying on business under the firm
name and style of M/s.Paras
Enterprises having its office
at 304, Veena Chamber, 21,
Dalal Street, Fort, Mumbai-400 001.

3. M/s.Shree Amit Builders, a
partnership firm, duly registered
under the Indian Partnership Act,
1932 and having its office at
Hamam Street, 2nd floor, Fort,
Mumbai 400 001.

4. M/s.Honesty Builders Pvt.Ltd.,
a company incorporated under the
Companies Act, 1956 and having
its registered address at C-503,
Kasturba Nagar, Ramchandra Lane,
Ext. Malad (West), Mumbai 400 054
and office at Flat No.1, Ground
Floor, New Bldg, Plot bearing C.S.
No.1/248, of Tardeo Division, 31,

Dr. Bhadkamkar Marg, Mumbai. Respondents
(original plaintiff &
defendants 1 to 3.).

Mr.Amit Sheth for the appellants.

Mr.B.D.Joshi with Ms.Bharati Mahant i/b.M/s.Divya Shah &
Associates for the respondents.

ALONG WITH
APPEAL NO.976 OF 2002
IN
CHAMBER SUMMONS NO.677 OF 2001
IN
SUIT NO.2632 OF 1992

1. Smt.Bharti J. Ladhani,
of Mumbai, Indian Inhabitant,
residing at Flat No.203-204,
Rajendra Kunj, Wing 'A', 31,
Dr.D.B.Marg, Mumbai Central,
Mumbai-400 008. Appellants
(original Applicants)

vs.

1. Daruwala Wadi C.H.S. Ltd.,
a Society registered under the
provisions of Maharashtra Co-
operative Societies Act, 1960
and having its office at 31,
Dr.Bhadkamkar Marg,
Mumbai 400 007.

2. Shri Pukhraj Chunilalji Bafna,
of Bombay, Indian Inhabitant, previously
carrying on business under the firm
name and style of M/s.Paras
Enterprises having its office
at 304, Veena Chamber, 21,
Dalal Street, Fort, Mumbai-400 001.

3. M/s.Shree Amit Builders, a
partnership firm, duly registered
under the Indian Partnership Act,
1932 and having its office at
Hamam Street, 2nd floor, Fort,
Mumbai 400 001.

4. M/s.Honesty Builders Pvt.Ltd.,
a company incorporated under the
Companies Act, 1956 and having
its registered address at C-503,

Kasturba Nagar, Ramchandra Lane,
Ext. Malad (West), Mumbai 400 054
and office at Flat No.1, Ground
Floor, New Bldg, Plot bearing C.S.
No.1/248, of Tardeo Division, 31,
Dr. Bhadkamkar Marg, Mumbai. Respondents
(original plaintiff &
defendants 1 to 3.).

Mr.Amit Sheth for the appellants.

Mr.B.D.Joshi with Ms.Bharati Mahant i/b.M/s.Divya Shah &
Associates for the respondents.

AND ALONG WITH
APPEAL NO.977 OF 2002
IN
CHAMBER SUMMONS NO.678 OF 2001
IN
SUIT NO.2632 OF 1992

1. Smt.Madhu V. Mehta
2. Smt.Savita A. Mehta
Both of Mumbai, Indian Inhabitant,
residing at Flat No.403 & 404,
Rajendra Kunj, Wing 'A', 31,
Dr.D.B.Marg, Mumbai Central,
Mumbai-400 008. Appellants
(original Applicants)

vs.

1. Daruwala Wadi C.H.S. Ltd.,
a Society registered under the
provisions of Maharashtra Co-
operative Societies Act, 1960
and having its office at 31,
Dr.Bhadkamkar Marg,
Mumbai 400 007.

2. Shri Pukhraj Chunilalji Bafna,
of Bombay, Indian Inhabitant, previously
carrying on business under the firm
name and style of M/s.Paras
Enterprises having its office
at 304, Veena Chamber, 21,
Dalal Street, Fort, Mumbai-400 001.

3. M/s.Shree Amit Builders, a
partnership firm, duly registered
under the Indian Partnership Act,
1932 and having its office at
Hamam Street, 2nd floor, Fort,

Mumbai 400 001.

4. M/s.Honesty Builders Pvt.Ltd.,
a company incorporated under the Companies Act, 1956 and having its registered address at C-503, Kasturba Nagar, Ramchandra Lane, Ext. Malad (West), Mumbai 400 054 and office at Flat No.1, Ground Floor, New Bldg, Plot bearing C.S. No.1/248, of Tardeo Division, 31, Dr. Bhadkamkar Marg, Mumbai. Respondents
(original plaintiff & defendants 1 to 3.).

Mr.Amit Sheth for the appellants.

Mr.B.D.Joshi with Ms.Bharati Mahant i/b.M/s.Divya Shah & Associates for the respondents.

CORAM : R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED : 27th January 2006

ORAL JUDGMENT (Per R.M.Lodha,J.).

This group of 10 appeals arises out of common order passed by the learned Chamber Judge on 12th February 2002 whereby he dismissed 10 separate chamber summons for impleadment of the applicants in Suit No.2632 of 1992. The applicants who took out chamber summons for their impleadment are in appeal.

2. Daruwala Wadi Cooperative Housing Society Limited (for short 'the society') filed the Suit for specific performance of the contract contained in the agreements dated 28th December 1978, 21st January 1980, Consent Terms dated 7th November 1984, 26th April 1987 and the

letters dated 8th August 1978 and 18th July 1989 against Pukhraj Chunilal Bafna (defendant no.1) and M/s.Shree Amit Builders (defendant no.2). The subject matter of the Suit is the property being City Survey No.248 situate at Dr.Bhadkamkar Marg, Mumbai. Survey No.248 was subsequently given two numbers - rear portion (plot no.248-A) and front portion (plot no.248-B). As per the sanctioned development plan, the rear portion of plot no.248-A was reserved for public housing. As per the case set up in the plaint, the occupants of various tenements in the said property were not able to develop the property and, therefore, they negotiated with the defendant no.2-the builder who had agreed to develop the entire property and also finance the development project. It appears that there were some disputes between the defendant no.2 and the plaintiffs. The defendant no.2 filed the Suit in the City Civil Court against the plaintiffs which resulted in a compromise and it was declared that the package deal agreement dated 21st January 1980 was valid and binding between the consenting parties and that the plaintiffs-society shall construct the building on its own through an independent contractor and the defendant no.2 shall pay the contractor the cost of the construction.

3. During the pendency of the Suit, the plaintiffs society came to know about agreement dated 28th February

1992 executed between the defendant no.1 and M/s.Honesty builders in respect of the rear portion of the suit property i.e. plot no.248-A. The plaintiffs-society, accordingly, applied for impleadment of M/s.Honesty Builders as defendant no.3 and upon leave being granted, M/s.Honesty Builders were impleaded as defendant no.3 in the Suit. The plaint was amended and the agreement dated 28th February 1992, between the defendant no.1 and the defendant no.3 was also challenged.

4. Somewhere in the month of June 2001, the appellants herein took out chamber summons for their impleadment as defendants in the Suit. They claimed that they were purchasers of the flats in the building known as "Rajendra Kunj" constructed on plot no.248-A. According to them each one of them had separately entered into the agreement for sale with M/s.Honesty Builders (defendant no.3). The defendant no.3 issued separate allotment letters in the year 1996. M/s.Honesty Builders failed to complete the work as per the allotment letters and, therefore, these applicants took physical possession of the building somewhere in the month of October 2000 and approached the contractors namely M/s.Innovators, who agreed to complete the incomplete work. M/s.Innovators-contractors completed the construction work and handed over the keys of the flats to the applicants. The applicants have alleged that,

thereafter, M/s.Honesty Builders threatened the applicants to evict from their respective flats which led them to file Suits for perpetual injunction against M/s.Honesty Builders in the City Civil Court and an order of status-quo has been passed therein against M/s.Honest Builders. According to the applicants, M/s.Honesty Builders filed an affidavit in reply in opposition to the interim application in the Suit filed by the applicants in the City Civil Court and from that they came to know about the present Suit and that necessitated the applications by them for their impleadment in the suit.

5. The chamber summons were opposed by the plaintiffs-society on the ground that there was no privity of contract of any nature whatsoever between them and the applicants and that allotment letters were forged, fabricated and do not confer any right, title or interest. It was submitted that the applicants were neither necessary nor proper parties in the Suit.

6. The learned Chamber Judge, after hearing the parties, held that the applicants were neither necessary nor proper parties. According to the learned Chamber Judge, by impleading the applicants as co-defendants in the Suit, unconnected matters would be introduced that would widen the scope of the present Suit which cannot

be done. The learned Chamber Judge, thus, by the impugned order dismissed the chamber summonses giving rise to the present appeals.

7. As to who are necessary and proper parties, does not require elaboration. Necessary parties are those persons in whose absence no decree or effective order can be passed by the Court. The proper parties are those whose presence before the Court is necessary to enable the Court to adjudicate upon and settle all questions involved in the Suit finally and effectually although no relief in the Suit is claimed against such persons. The two tests to be satisfied for determining the question as to who is a necessary party are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) No effective decree can be passed in the absence of such party. In a Suit for specific performance of the contract, the Courts have time and again held that the stranger to the contract claiming to have an independent title and possession over contracted property is not entitled to be impleaded as party-defendant. If a party is not a party to the agreement of sale, it cannot be said that without his presence, the dispute as to specific performance cannot be determined. Such a party is not a necessary party. It is also settled that if a party who is not a party to

the contract and who claims to have an independent title and possession of the contracted property is added or impleaded in the Suit, the scope of the Suit for specific performance of the contract for sale is enlarged which is not permissible in law. It has been repeatedly held by the Courts that a Suit for specific performance of the contract by impleadment of a stranger to the contract cannot be converted into a regular title suit. A third party or stranger to the contract cannot be added so as to convert the Suit of one character into a Suit for different character. In Kasturi vs. Iyyamperumal & ors., **(2005) 6 SCC 733**, the three Judge bench of the Supreme Court re-iterated the aforesaid legal position thus:

> "7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.
>
> 9. We have carefully considered sub-sections

(a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of clauses (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of Section 19 of the Specific Relief Act.

11. As noted hereinearlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cotenham in Tasker v. Small made the following observations: (ER pp.850-51).

> . "It is not disputed that, generally, to a bill for a specific performance of a contract of sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as at law, the contract constitutes the right, and regulates the liabilities of the parties;

> and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it."

> 13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectively and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person."

8. In the case of Kasturi, the Supreme Court further held that merely to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of a contract for sale. The Supreme Court went on to observe in paragraph 19 of the report thus:

> "19. The learned counsel appearing for Respondents 1 and 4 to 11, however, contended that since Respondents 1 and 4 to 11 claimed to be in possession of the suit property on the basis of their independent title to the same, and as the appellant had also claimed the relief of possession in the plaint, the issue with regard to possession is common to the parties including Respondents 1 and 4 to 11, therefore, the same can be settled in the present suit itself. Accordingly, it was submitted that the presence of Respondents 1

> and 4 to 11 would be necessary for proper adjudication of such dispute. This argument which also weighed with the two courts below although at the first blush appeared to be of substance but on careful consideration of all the aspects as indicated hereinearlier, including the scope of the suit, we are of the view that it lacks merit. Merely in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract for sale because Respondents 1 and 4 to 11 are not necessary parties as there was no semblance of right to some relief against Respondent 3 to the contract. In our view, the third party to the agreement for sale without challenging the title of Respondent 3, even assuming they are in possession of the contracted property, cannot protect their possession without filing a separate suit for title and possession against the vendor. It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and Respondents 2 and 3 shall only be gone into and it is also not open to the Court to decide whether Respondents 1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against Respondents 2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of Respondents 1 and 4 to 11 relating to the contracted property."

9. In the light of the aforesaid legal position, now we shall advert to the facts of the present case. Admittedly, the applicants are not parties to the contract of which specific performance is sought by the plaintiffs. In other words, they are stranger to the contract of which the specific performance is sought.

As a matter of fact, there is no privity of contract between the plaintiffs and M/s.Honesty Builders (defendant no.3) as well. The defendant no.3 was impleaded as party defendant subsequent to the filing of the Suit as they were claiming to have entered into a contract for rear portion (plot No.248-A) with the defendant no.1. The plaintiffs-society, therefore, by way of amendment impleaded the defendant no.3 in the Suit and prayed that the alleged agreement between the defendant no.3 and defendant no.1 be declared illegal and invalid. In so far as the present applicants are concerned, they claim to have purchased the flats from the defendant no.3. Without going into the aspects as to whether the alleged sale of the flats by defendant no.3 to the applicants has any legal sanctity in view of order of status-quo passed by this Court, suffice it to say that based on the alleged sale of flats from the defendant no.3-M/s.Honesty Builders, the applicants cannot be impleaded as party defendants in the Suit for specific performance of the contract between the plaintiffs and the defendant nos.1 and 2. The applicants are surely not necessary parties. They are not proper parties as well. Their presence shall not be necessary for the Court in deciding the dispute finally and effectually in the Suit for specific performance of the contract. Rather, as observed by the learned Chamber Judge, their impleadment in the Suit shall make

the things more complicated by introducing unconnected matters. The submission of the learned counsel for the applicants that since the applicants are purchasers of the flats from the defendant no.3 and they are necessary parties in the light of the law laid down by the Supreme Court in the case of Kasturi is fallacious. In Kasturi's case the Supreme Court held that in a Suit for specific performance of the contract, the necessary parties are the parties to the contract or parties claiming under them or a person who had purchased the property from the vendor with or without notice of the contract. The applicants are not parties to the contract. They are not parties claiming under them because there is no privity of contract between the applicants and the plaintiffs or the applicants and the defendants 1 and 2.

10. The learned counsel for the appellants submitted that the appellants are purchasers for consideration in good faith and without notice; they had no knowledge till 23.03.2001 of the undertaking given by M/s.Honesty Builders to this court; they were also in possession since 2000 under letters of allotment issued by M/s.Honesty Builders; they are protected under Section 53-A of the Transfer of Property Act and, therefore, entitled to enforce their right. The appellants may be entitled to enforce their rights against M/s.Honesty

Builders but that has to be enforced through an independent proceeding and not by participation in the Suit for specific performance of the contract between the plaintiffs and defendants 1 and 2. The controversy between the applicants and M/s.Honesty Builders (defendant no.3) is not capable of being gone into nor can be gone into in the Suit for specific performance of the contract filed by the society.

11. In the facts and circumstances of the case, we have no hesitation in holding that the appellants are neither necessary nor proper parties. There is find no error in the order of the learned trial Judge.

12. The learned counsel for the appellants submitted that the appellants have already filed a separate suit being Suit No.663/2001 against M/s.Honesty Builders (defendant no.3) and that if the appellants-applicants are not impleaded in Suit No.2632/1992, at least both the Suits may be ordered to be tried together.

13. It is for the appellants to apply to the learned trial Judge that proceedings in Suit No.2632/1992 and the Suit No.663/2001 be taken up together and simultaneously. If such an application is made, obviously, the learned trial Judge shall pass appropriate order uninfluenced by the fact that the

chamber summons taken out by them for their impleadment in Suit No.2632/1992 has been denied.

14. We, accordingly, dismiss these 10 appeals with no order as to costs with the observation as noticed above.

(R. M. LODHA, J.)

(ANOOP V. MOHTA, J.)